

General Information Letter: Characterization of single-member limited liability companies electing to be disregarded for federal income tax purposes.

April 13, 1998

Dear:

This is in response to your letter dated April 13, 1998, in which you request a letter ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

In your letter you have stated the following:

"LLC-Parent" is a Delaware limited liability company that is expected to be authorized to do business in Illinois. LLC-Parent has two members, both of which also are limited liability companies (whose members in turn are individuals and possibly various entities). LLC-Parent has elected (or will elect) to be classified as a partnership for Federal income tax purposes under Treas. Reg. § 301.7701-3.

LLC-Parent proposes to form two wholly-owned limited liability companies, "LLC-Sub-1" and "LLC-Sub-2," both of which will be Delaware limited liability companies and are expected to be authorized to do business in Illinois. Thus, LLC-Sub-1 and LLC-Sub-2 each have a single member, which will be LLC-Parent.

As single-member limited liability companies, LLC-Sub-1 and LLC-Sub-2 will elect to be disregarded as separate entities for Federal income tax purposes, and each will be treated as a branch or division of LLC-Parent under Treas. Reg. § 301.7701-3.

We would appreciate your confirming our understanding that, for Illinois income tax purposes, LLC-Sub-1 and LLC-Sub-2 will be disregarded as separate entities and will be treated as if they were each a branch or division of LLC-Parent, in conformity with the Federal income tax treatment. Additionally, we would appreciate your confirming that because LLC-Sub-1 and LLC-Sub-2 will be disregarded, the Illinois Personal Property Tax Replacement Income Tax will not be imposed on LLC-Sub-1 and LLC-Sub-2 but instead will be imposed on LLC-Parent. If our understanding is incorrect, we would appreciate your clarifying the Illinois income tax treatment of LLC-Sub-1 and LLC-Sub-2.

## Ruling

Section 102 of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 et seq.) provides:

Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.

Section 1501(a)(16) of the IITA provides:

The term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this Act, a trust or estate or a corporation; and the term "partner" includes a member in such syndicate, group, pool, joint venture or organization.

Any entity, including a limited liability company formed under the Illinois Limited Liability Company Act, shall be treated as a partnership if it is so classified for federal income tax purposes.

Section 7701(a)(2) of the Internal Revenue Code defines "partnership" to include:

a syndicate, group, pool, joint venture, or other unincorporated organization, through or by which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation.

Treas. Reg. § 301.7701-3 provides that, in determining how an unincorporated organization shall be classified, limited liability companies and other "eligible entities" may generally elect to be classified as partnerships or as corporations. Treas. Reg. § 301.7701-3(b) provides:

Classification of eligible entities that do not file an election--

(1) Domestic eligible entities. Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a domestic eligible entity is--

(i) A partnership if it has two or more members; or

(ii) Disregarded as an entity separate from its owner if it has a single owner.

Pursuant to this provision, a single-member limited liability company which does not elect to be treated as a corporation will be treated as if it were not an entity separate from its owner. If the owner is a partnership, the single-member limited liability company and the member/owner partnership will be treated as a single entity defined under the Internal Revenue Code to be a partnership.

Because this definition is expressly adopted by the IITA, single-member limited liability companies whose member/owner is a partnership and which do not elect to

be taxed as corporations will not be treated as separate entities for Illinois income tax purposes. Instead, the single-member limited liability companies and their member/owner partnership will be, by definition, a single entity taxed as a partnership, and the assets, liabilities, and items of income, deduction, and credit of the limited liability companies must be included with the assets, liabilities, and items of income, deduction, and credit of the member/owner partnership in determining any Illinois income tax and Personal Property Tax Replacement Income Tax liabilities of the member/owner partnership and of its partners.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely,

Paul S. Caselton  
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